

THE HONORABLE TIFFANY M. CARTWRIGHT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CAROL VAUGHN, in her representative
capacity as Personal Representative of the
ESTATE OF MICHAEL A. COHEN,

Plaintiff,

v.

LOREN COHEN, et al.,

Defendants.

WILLIAM NEWCOMER,

Plaintiff,

v.

LOREN COHEN, et al.,

Defendants,

v.

AMARA COHEN, individually, and SUSAN
COHEN, Trustee of the Michael Arthur
Cohen Spousal Equivalent Access Trust,
CAROL VAUGHN, individually, and in her
representative capacity as Personal
Representative of the ESTATE OF
MICHAEL COHEN, UNITED STATES OF
AMERICA (DEPARTMENT OF INTERNAL
REVENUE), and BR NEWCOMER, LLC,

Third-Party Defendants.

NO. 3:23-cv-06142-TMC

**STIPULATED PROTECTIVE
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things produced or otherwise exchanged:

(a) tax returns produced by Certified Public Accountant Curt Stebbins that he prepared from 2014 – 2020 for Loren Cohen individually, and business entities in which Michael Cohen had an interest to the extent the designating party in good faith believes they contain trade secrets or nonpublic proprietary confidential technical, scientific, financial, commercial, health, or medical information; and

(b) records for 2014-2020 produced by Certified Public Accountant Curt Stebbins as to the following entities, to the extent the designating party in good faith believes they contain trade secrets or nonpublic proprietary confidential technical, scientific, financial, commercial, health, or medical information:

1. Hawthorne Hills Two, LLC
2. MC Real Estate Consultants, LLC
3. MC Ruston, LLC
4. Rainier Property Service LLC
5. BR Real Estate Investment, LLC
6. C&M Construction Management, LLC

1 7. MC Construction Consultants, Inc.

2 8. MC Real Estate Consultants, LLC

3 9. 3M&C Developing Company, LLC

4 10. Blueberry Farms, LLC

5 11. Blueberry Farms II, LLC

6 12. Bonney Ridge LLC

7 13. Dela Dawn Developing, LLC

8 14. KT&MC Developing, LLC

9 15. Two Bonney Ridge LLC

10 16. M&J Real Estate Investment, LLC

11 The Parties agree that designation of these categories as Confidential does not make any
12 particular document discoverable.

13 3. SCOPE

14 The protections conferred by this agreement cover not only confidential material (as
15 defined above), but also (1) any information copied or extracted from confidential material; (2)
16 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
17 conversations, or presentations by parties or their counsel that might reveal confidential material.

18 However, the protections conferred by this agreement do not cover information that is in
19 the public domain or becomes part of the public domain through trial or otherwise.

20 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

21 4.1. Basic Principles. A receiving party may use confidential material that is disclosed
22 or produced by another party or by a non-party in connection with this case only for prosecuting,
23 defending, attempting to settle this litigation, or complying with statutory or regulatory
24 requirements or government agency policies regarding file retention and disclosure. Confidential
25 material may be disclosed only to the categories of persons and under the conditions described in
26 this agreement. Confidential material must be stored and maintained by a receiving party at a
27

1 location and in a secure manner that ensures that access is limited to the persons authorized
2 under this agreement.

3 4.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
4 ordered by the court or permitted in writing by the designating party, a receiving party may
5 disclose any confidential material only to:

6 (a) the receiving party's counsel of record in this action, as well as employees
7 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

8 (b) the officers, directors, and employees (including in house counsel) of the
9 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
10 agree that a particular document or material produced is for Attorney's Eyes Only and is so
11 designated;

12 (c) experts and consultants to whom disclosure is reasonably necessary for
13 this litigation and who have agreed in writing to be bound by this protective order, including
14 employees and subcontractors of the experts or consultants retained by the parties or by their
15 counsel for purposes of this litigation in paraprofessional, clerical, stenographic and ministerial
16 positions;

17 (d) the court, court personnel, and court reporters and their staff;

18 (e) copy or imaging services retained by counsel to assist in the duplication of
19 confidential material, provided that counsel for the party retaining the copy or imaging service
20 instructs the service not to disclose any confidential material to third parties and to immediately
21 return all originals and copies of any confidential material;

22 (f) witnesses in the action to whom disclosure is reasonably necessary and
23 who have agreed in writing to be bound by this protective order, unless otherwise agreed by the
24 designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits
25 to depositions that reveal confidential material must be separately bound by the court reporter
26 and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) Insurance carriers and their claims representatives, for the purpose of analyzing and valuing the potential claims;

(i) Any person to whom disclosure is required by statute; and,

(j) Any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper.

4.3. Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify in writing within seven business days of the initial request for a meet and confer the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

4.4. Use of Confidential Material at Hearing or Trial. Nothing in this Protective Order shall be grounds for limiting or restricting the use of confidential material during a public hearing or trial. A party seeking to maintain the confidentiality of evidence to be presented at trial shall raise the matter with the Court in the pretrial order. A receiving party seeking to present confidential information during a public hearing shall notify the party who has designated the information as confidential fifteen (15) business days in advance of the hearing,

and it will be incumbent upon the designating party to move for an order closing the hearing (or a portion thereof) to the public.

5. DESIGNATING PROTECTED MATERIAL

5.1. Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2. Manner and Timing of Designations. Except as otherwise provided in this agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party’s right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1. Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2. Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer

conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3. Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

It shall be the sole obligation of the party designating the material confidential to take whatever steps they determine to be necessary to maintain the information’s protection following the notification process above.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

1 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
 2 material to any person or in any circumstance not authorized under this agreement, the receiving
 3 party must immediately (a) notify in writing the designating party of the unauthorized
 4 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
 5 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
 6 this agreement, and (d) request that such person or persons execute the “Acknowledgment and
 7 Agreement to Be Bound” that is attached hereto as Exhibit A.

8 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
 9 MATERIAL

10 When a producing party gives notice to receiving parties that certain inadvertently
 11 produced material is subject to a claim of privilege or other protection, the obligations of the
 12 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
 13 provision is not intended to modify whatever procedure may be established in an e-discovery
 14 order or agreement that provides for production without prior privilege review. The parties agree
 15 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

16 10. CONSENT TO DISCLOSURE

17 Nothing in this Protective Order shall prevent disclosure of any confidential information
 18 if the designating party consents in writing to the disclosure.

19 11. VIOLATION OR POTENTIAL VIOLATION OF LAW

20 Notwithstanding any provision of this Protective Order, where counsel believe
 21 confidential information or documents, either on its face or in conjunction with other
 22 information, indicates a violation or potential violation of law—criminal, civil, or regulatory in
 23 nature—the relevant information or documents may be disclosed to the appropriate federal, state,
 24 local, foreign, or tribal, law enforcement authority or other appropriate agency charged with the
 25 responsibility of investigating or prosecuting such a violation or enforcing or implementing such
 26 law. Employees or contractors of the United States Department of Justice and the Internal
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Revenue Service (including counsel for the Internal Revenue Service) assigned to any criminal investigation or matter are not bound by this Protective Order.

12. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

Moreover, this provision does not apply with respect to (a) material that becomes part of the Court record in this matter, (b) work product of counsel, (c) trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, and consultant and expert work product, and (d) transcripts, exhibits, and other documents required to be maintained by the U.S. Department of Justice's written record retention policy as necessary for an understanding of the outcome of the case, provided that all material designated confidential pursuant to paragraph 5 in such retained material is maintained in accordance with the provisions hereof.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

STIPULATED TO AND DATED this 9th day of December, 2024.

TERRELL MARSHALL LAW GROUP
PLLC

By: /s/ Adrienne D. McEntee
Adrienne D. McEntee, WSBA No. 34061
E-mail: amcentee@terrellmarshall.com

LAW OFFICES OF JACK B. KRONA, JR.

By: /s/ Jack B. Krona, Jr.
Jack B. Krona, Jr., WSBA No. 42484
E-mail: j_krona@yahoo.com
5020 Main Street, Suite H

Toby J. Marshall, WSBA No. 32726
 E-mail: tmarshall@terrellmarshall.com
 936 North 34th Street, Suite 300
 Seattle, Washington 98103
 Telephone: (206) 816-6603

Tacoma, WA 98407
 Telephone: (253) 341-9331

*Attorneys for Loren Cohen as Trustee of the
 LMC Family Trust*

Attorneys for Loren Cohen individually

THOMPSON HOWLE VAUGHN

LEE SMART, P.S., INC.

By: /s/ Carol Vaughn

By: /s/ Marc Rosenberg

Carol Vaughn, WSBA No. 16579
 E-mail: carolv@thompsonhowle.com
 1200 Fifth Avenue, Suite 625
 Seattle, WA 98101
 Telephone: (206) 682-8400

Marc Rosenberg, WSBA No. 31034
 E-mail: mr@leesmart.com
 Hildja S. Saas, WSBA No. 37691
 E-mail: hss@leesmart.com
 701 Pike Street, Suite 1800
 Seattle, Washington 98101
 Telephone: (206) 262-8308

*Personal Representative of the Estate of
 Michael Cohen*

*Attorneys for Counterclaim Defendant Carol
 Vaughn*

MOEN LAW OFFICES

SMITH ALLING, P.S.

By: /s/ Bruce Moen

By: /s/ Russell A. Knight

Bruce Moen, WSBA No. 6640
 E-mail: brm@moenlaw.com
 1200 Fifth Avenue, Suite 625
 Seattle, WA 98101
 Telephone: (206) 441-1156

Russell A. Knight, WSBA No. 40614
 E-mail: rknight@smithalling.com
 1501 Dock Street
 Tacoma, WA 98402
 Telephone: (253) 627-1091

*Attorneys for the Personal Representative of
 the Estate of Michael Cohen*

*Attorneys for William Newcomer and BR
 Newcomer, LLC*

KELLER ROHRBACK L.L.P.

U.S. DEPARTMENT OF JUSTICE
 TAX DIVISION

By: /s/ Eric R. Laliberte

DAVID A. HUBBERT
 Deputy Assistant Attorney General

Eric R. Laliberte, WSBA No. 44840
 E-mail: elaliberte@kellerrohrback.com
 1201 Third Avenue, Suite 3200
 Seattle, WA 98101
 Telephone: (206) 623-1900

By: /s/ Timothy J. Huether

Timothy J. Huether
 E-mail: timothy.huether@usdoj.gov
 P.O. Box 683
 Washington, D.C. 20044
 Telephone: (202) 307-2124

Attorneys for Amara Cohen and Susan Cohen

Attorneys for the United States of America

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents, electronically stored information (ESI) or information, whether inadvertent or
4 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or
5 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
6 documents, including the attorney-client privilege, attorney work-product protection, or any
7 other privilege or protection recognized by law. This Order shall be interpreted to provide the
8 maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b)
9 do not apply. Nothing contained herein is intended to or shall serve to limit a party's right to
10 conduct a review of documents, ESI or information (including metadata) for relevance,
11 responsiveness and/or segregation of privileged and/or protected information before production.
12 Information produced in discovery that is protected as privileged or work product shall be
13 immediately returned to the producing party.

14 DATED: 9th of December 2024.

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17 TIFFANY M. CARTWRIGHT
18 United States District Court Judge
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